

ARGUMENT

Claims 20, 21 and 24 are currently pending in this application. Claim 28 has been newly added.

5 Rejection of Claim 20 under 35 U.S.C. § 103

The Examiner has rejected Claim 20 under 35 U.S.C. § 103 as being unpatentable over Sessler (U.S. Patent No. 5,622,946) in view of Lehninger (Biochemistry, 2nd Edition, pages 641-642, Worth Publishers (1975)). The Examiner has maintained his rejection of Claim 20 based on his position that while Claim 20 does
10 not require ionizing radiation, it does permit ionizing radiation since Claims 20 is drawn to a method that "comprises" the additional steps; as such additional steps are encompassed.

Applicants' respectfully submit that amended Claim 20 is drawn to a method of inducing targeted oxidative stress "in the absence of ionizing radiation" and thus does
15 not permit ionizing radiation and is thus distinguished over Sessler. Applicants respectfully submit that amended Claim 20 overcomes Examiner's instant rejection. Reconsideration and removal of the instant rejection is respectfully requested.

The Examiner continues to maintain his rejection of Claim 20 based on his argument that while the Specification (page 18) describes the term "cellular metabolite"
20 to be compounds that have a reduction potential which is more negative than that of molecular oxygen, Claim 20 does not have such a specific limitation. Applicants respectfully submit that amended Claim 20 now includes language wherein a cellular metabolite has a reduction potential more negative than that of molecular oxygen.

Applicants respectfully submit that amended Claim 20 overcomes the Examiner's
25 instant rejection of Claim 20. Accordingly, reconsideration and removal of the instant rejection is respectfully requested.

Rejection of Claims 20 and 21 under 35 U.S.C. § 103

The Examiner maintains his rejection of Claims 20 and 21 under 35 U.S.C. § 103
30 as being unpatentable over Vogel (U.S. Patent No. 5,244,671).

The Examiner argues that the term "texaphyrin," without further qualification, does not preclude the absence of a metal ion, and Claims 20 and 21 make no mention of texaphyrins.

Applicants' submit that currently amended Claim 20, and therefore dependent
5 Claim 21 as well, now require "a metal containing texaphyrin of Formula I that preferentially accumulates in tumor" instead of "an agent that preferentially accumulates in tumor." The currently amended Claim 20 thus clearly limits a texaphyrin to a texaphyrin of Formula I that contains a metal. Support for texaphyrins of Formula I containing a metal (M) can be found on page 9 in the Detailed Description of the
10 Specification. The amended Claim 20 thus requires metal containing texaphyrins as the agent that preferentially accumulates in tumor, thereby distinguishing it from porphyrins of Vogel. Rejection of Claim 20 as being unpatentable over Vogel is thus overcome. Reconsideration and removal of the instant rejection is respectfully requested.

15 The Examiner has further rejected Claims 20 and 21 under 35 U.S.C. § 103 as being unpatentable over Vogel (U.S. Patent No. 5,244,671) in view of Kimoto (Cancer Research 43(2), 824-8 (1983) or Bram (Nature 284(5757) 629-31 (1980)). Applicants submit that amended Claim 20 now requires metal containing texaphyrins. Applicants respectfully submit that said amended Claim overcomes the instant rejection for
20 reasons discussed above. Applicants respectfully urge reconsideration and removal of the instant rejection of Claims 20 and 21 based on Vogel in view of Kimoto and Bram.

The Examiner has also rejected Claims 20 and 21 under 35 U.S.C. § 103 as being unpatentable over Platzek (U.S. Patent No. 6,136,841). Applicants respectfully submit that amended Claim 20 excludes irradiation, while Platzek teaches porphyrins
25 as suitable pharmaceutical agents for use in photodynamic therapy. The rejection based on Platzek is thus not applicable. Reconsideration and removal of the instant rejection of Claims 20 and 21 under 35 U.S.C. § 103 as being unpatentable over Platzek is respectfully requested.

The Examiner has also rejected Claims 20 and 21 under 35 U.S.C. § 103 as
30 being unpatentable over Platzek (U.S. Patent No. 6,136,841) in view of Kimoto (Cancer Research 43(2), 824-8 (1983)) or Bram (Nature 284(5757), 629-31 (1980)). As

discussed above, Applicants respectfully submit that amended Claim 20 excludes irradiation and uses texaphyrins. Platzek does not teach or suggest that one could use texaphyrins as anticancer agents in the absence of photoirradiation. Applicants respectfully assert that reconsideration and removal of the instant rejection of Claims 20 and 21 is in order. Amended Claim 20 now excludes irradiation and requires use of texaphyrins. As discussed above, these amendments overcome the instant rejection.

Objected to Claim 24

Claim 24 was objected to because of its dependence on rejected Claims. Claim 24 had multiple dependency from Claims 20 and 21. Applicants have amended Claim 24, making it an independent Claim with all the limitations of Claims 20 and 24. Applicants have added new independent Claim 28 with all limitations of Claims 20, 21 and 24. Applicants respectfully submit that amended Claim 24 and new Claim 28 overcome the objection to Claim 24 because of its dependence on rejected Claims. Reconsideration and removal of the instant rejection of Claim 24 is respectfully requested.

REMARKS

Applicants believe that amended Claim 20 does address and overcome all the § 102 and § 103 rejections in the instant case. Similarly, amended Claim 24 and new Claim 28 overcome objection to Claim 24. Applicants believe that the present response is fully responsive to the Office Action issued by the Examiner in this case.

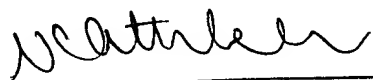
Applicants submit that the instant amendment to the Claims does not introduce any new matter. This response is being filed within two months of the date of the Final Office Action. No fees are due at this time. Should the Examiner determine otherwise, the Examiner is hereby authorized to deduct any additional fees, if necessary, or credit any overpayment, to the Applicants Deposit Account No. 16-1450. Applicants respectfully request the Examiner to contact Applicants' undersigned Attorney should the Examiner have any questions.

CONCLUSION

For the foregoing reasons, Applicant believes all the pending Claims are in condition for allowance and should be passed to issue. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, the Examiner is requested to contact the undersigned at 408.990.7367.

Respectfully Submitted,

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